SENATOR RUNNER'S WEEK IN REVIEW

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News of the Week

Physician-Assisted Suicide

On January 17, 2006, the U.S. Supreme Court issued an opinion upholding Oregon's "Death With Dignity" Act, which allows physicians to issue prescriptions for a lethal dosage of medication to a terminally-ill patient. Though a far cry from an affirmation of assisted suicide, the Court's 6-3 ruling in *Gonzalez v. Oregon* has been seized upon by some as a reason to approve a so-called "Right To Die" law here in California.

Couched in federalism, *Gonzalez v. Oregon* basically declared that the U.S. Attorney General's Office overstepped its authority in a 2001 Interpretive Rule that restricted the use of controlled substances for physician-assisted suicides. The Court stated the rule unduly infringed on a state's right to regulate the practice of medicine by physicians. The Court concluded that the Attorney General did not have this power because his power under the CSA of "preventing doctors from engaging in illicit drug trafficking" does not extend to determining objects for which drugs may be administered through the issuing of an Interpretive Rule.

Justice Kennedy wrote that "Oregon's regime is an example of the state regulation of medical practice that the CSA presupposes. Rather than simply decriminalizing assisted suicide, Oregon Death With Dignity Act limits its exercise to the attending physicians of terminally ill patients, physicians who must be licensed by Oregon's Board of Medical Examiners." It is within the power and authority of state's to regulate medical practice. The federal government may not infringe on the state's regulation of medical practice through the issuance of an Interpretive Rule, which bans the use of certain drugs for a certain purpose, according to the opinion.

Dissenting Opinions

Justice Scalia dissented from the court's opinion and Chief Justice Roberts and Justice Thomas joined him. Among other reasons, Scalia observed that the overwhelming weight of authority, medical and legal, is that assisting in suicide is not a legitimate medical purpose.

He concluded that "Unless we are to repudiate a long and well-established principle of our

jurisprudence, using the federal commerce power to prevent assisted suicide is unquestionably permissible. The question before us is not whether Congress can do this, or even whether Congress should do this; but simply whether Congress has done this in the CSA. I think there is no doubt that it has. If the term 'legitimate medical purpose' has any meaning, it surely excludes the prescription of drugs to produce death."

Justice Thomas dissented emphasizing that the court's majority ignored the precedent they supported in a recent case that held that the Controlled Substances Act prohibited the use of marijuana under California's medical marijuana law.

Unfortunately, the majority in this case demonstrated that it will go to any length to uphold its social policy views. It even used federalism principles, which they so often ignore, to strike down a federal regulation, which prohibited physician-assisted suicides in Oregon.

California Legislation

Since there are no federal laws prohibiting physician-assisted suicide, the Supreme Court's ruling essentially outlines how similar legislation could be authorized in California. Assembly Members Patty Berg (D-Eureka) and Lloyd Levine (D-Van Nuys) already have introduced an assisted suicide bill which is modeled after Oregon's law. Assembly Bill 651–dubbed the California Compassionate Care Act – stalled last year. However, they are renewing their efforts in light of the Court ruling so if this bill ever became law it will most likely be upheld by state courts if it is approved by the Legislature and signed by the Governor. Therefore, we must consider carefully the consequences of legalizing physician-assisted suicide.

Backers of this legislation state that assisted suicide would be restricted to cases of unbearable suffering yet it contains no such requirement. Wesley J. Smith, a senior fellow at the Discovery Institute, lawyer for the International Task Force on Euthanasia and Assisted Suicide and a special consultant to the Center for Bioethics and Culture further states, "Nor does the law in Oregon, where doctors who assist suicides report that most patients do not seek death because of pain, but because they fear being a burden, can no longer engage in enjoyable activities or fear losing dignity." (*San Francisco Chronicle*, January 22, 2006)

Smith goes on to highlight that nobody really knows what is going on in Oregon. The state does not conduct independent reviews of assisted suicide deaths. However abuses have already been noted. In the only case that medical records were independently reviewed and reported, the Journal of the American Psychiatric Association disclosed where a patient received a lethal prescription almost two years before he died naturally, even though Oregon law requires that the patient must likely die within six months.

Californians are deeply divided on the subject. In 1992, state voters rejected Proposition 161, a broader ballot initiative, by a 54% to 46% margin. Although euthanasia would involve the actions of a second person very directly to achieve suicide, there is no debating that AB 651 would involve physicians in the act of taking lives--something completely against the Hippocratic Oath physicians take when they commit themselves to the practice of healing.

Both the California Medical Association (CMA) and the American Medical Association (AMA) have consistently opposed efforts to legalize physician-assisted suicide, including AB 651. In fact, the AMA states in its code of ethics that, "Allowing physicians to participate in assisted suicide would cause more harm than good. Physician-assisted suicide is fundamentally incompatible with the physician's role as healer, would be difficult or impossible to control, and would pose serious societal risks."

As health care costs balloon, might assisted suicide be seen as a way to control costs? In other words, would patients otherwise predisposed to fight to live, be pressured – by their own guilt or by their families – to take the inexpensive way out? A number of organizations representing the rights of the disabled oppose physician-assisted suicide for this very reason. Terminal diagnoses and medical opinions are subjective. A person who is told they have six months to live may survive for many years beyond a physician's estimate similar to the case in Oregon.

A better solution is to support hospice care and ensure people have access to medications and pain management. Even, studies have shown that when pain management and proper care are taken care of, suicidal desires almost always disappear.

California should not rush to the conclusion that assisted-suicide is the best solution but we should continue to support proposals to increase access to pain management and hospice care, which are truly the most compassionate way.

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